

**United States of America
Before The National Labor Relations Board
Region Twenty-Five**

E.L.C. Electric, Inc. and its alter Ego and/or
Midwest Electric & Retail Contractors, Inc.
d/b/a MERC, Inc. , and Asset Management
Partners, Inc, a single integrated business
Enterprise and single employer, and
Edward L. Calvert, Individually.

and

International Brotherhood of Electrical
Workers, AFL-CIO,

And

International Brotherhood of
Electrical Workers, Local Union
No. 481, a/w International
Brotherhood of Electrical
Workers, AFL-CIO

Case Nos.:

25-CA-28283-1 Amended
25-CA-28283-2 Amended
25-CA-28283-4 Amended
25-CA-28398-1 Amended
25-CA-28567
25-CA-28582
25-CA-28637 Amended

Case Nos.:

25-CA-28397-Amended
25-CA-28406
25-CA-28532 Amended

The above entitled matter came on for hearing, pursuant to notice,
Before **Ira Sandron, Administrative Law Judge**, at 575 North
Pennsylvania Street, Indianapolis, Indiana, on Monday, August 15,
2011, at 10: 00 a.m.

Respondent's Exceptions And Appeal Brief
To The Administrative Law Judge
Supplemental Decision And Order

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Introduction

My name is Edward Lee Calvert. I am the respondent in the NLRB Cases listed on the included caption page.

I am sixty-seven years old, the father of two and grandfather of four. I am a High School graduate and did not attend college. I am a Christian but have not always been a Christian. I have made many mistakes in my life but I have also tried to help others along the way.

I started in business as an electrical contractor July 1, 1977. My business location was in my garage. My office and warehouse was in my garage. Later on I incorporated ELC Electric in 1983.

At some period of time in the late nineties, I began bidding and winning public work projects, mainly school projects. These projects were Davis Bacon projects requiring certain wage scales. At some period of time after ELC Electric successfully completed each project the Indiana Department of Labor would audit those projects and would usually find something requiring additional payments to someone. We would work with the IDOL and after a settlement amount was reached would pay the amount due.

As we grew and began competing on much larger public works projects, the local IBEW union sought, as I was told, to either organize us or to put ELC Electric out of business. Before this time, ELC Electric enjoyed a good reputation among fellow competitors, the Indiana Secretary of State, general contractors, architects and project owners. Many of the Davis Bacon public works projects required specific record keeping i.e., certified payrolls, lien waivers, etc. ELC complied with all of the project requirements and was praised by accountants and attorneys regarding our excellent record keeping and documentation procedures.

Sometime early in two thousand, the IDOL audited two completed Davis Bacon school projects and concluded ELC did pay the proper wages but failed to pay the proper benefits. ELC engaged their out of house independent CPA to review the IDOL's audit and found their audit to be flawed throughout with mistakes. We attempted to point out these errors to the IDOL however they would not change their findings even though it was clear that mistakes were made when they listed several employees having received no benefits when in reality, many received three

and four week paid vacations, partly paid health insurance, seven paid holidays, and some with gas cards. We produced a letter from an IDOL auditor who had earlier investigated another Davis Bacon project completed by ELC that confirmed the method of benefit calculations acceptable to the IDOL. We pointed out that we had complied with this letter and the IDOL Commissioner told us “you should have never received that letter, it was a mistake”. We refused to pay the flawed audited amount and the IDOL put our name on the IDOL web site listing ELC Electric’s name as a “prevailing wage violator” even though ELC never received due process and was never proven in a court of law that we were a factual wage violator. The IDOL sent notices to all employees whom they alleged was owed money from ELC advising them to sue ELC and that they could collect triple the damages. A well known union attorney contacted the people who received notices from the IDOL and persuaded them to file suit against ELC. A suit was filed and we spent thousands of dollars defending ourselves but after we exhausted our resources, their attorney applied for Summary Judgment which was granted. The judgment awarded was for one hundred and seventy-five thousand dollars plus attorney fees of seventy-five thousand dollars.

Also in approximately this same time period, the Local IBEW began an all out assault on ELC in an effort to achieve their goal of organizing or destruction. They sent union affiliated people to apply for employment at ELC for advertised employment openings. After working for one to two weeks they would send a letter to ELC advising that they were union organizers. The quantity and quality of their work would decrease and they would soon leave ELC’s employment and immediately file unfair labor practice charges for one reason or another. ELC would then be required to spend thousands of dollars for a defense when, later, most of the ULP charges would be dropped. After paying over two hundred thousand dollars in legal fees and expenses over a three year period, I sought legal advice from a labor relation attorney on how to legally combat this situation. My so called labor specialist attorney advised me that ELC could change its method of providing labor on projects from using labor forces hired directly by ELC to use labor forces provided by temporary labor provider companies. The attorney informed me that he had made this labor transformation at another company having similar problems and that they were doing exceedingly well. Based on this advice, I proceeded to make

these changes. From start to finish the attorney led ELC through each step of the process to make these changes. Every employee was offered the opportunity to remain on the project where they were working at the same rate and with better benefits if they wished and without missing any work. To take advantage of continued employment, they would need to apply for employment at the temporary employee agency we engaged to provide labor for ELC. The local IBEW knew exactly the actions we were taking and NEVER made any objections to ELC.

After two or more years of operating in this manner, ELC received a NLRB notice that ELC had committed an unfair labor practice because it chose to use a temporary labor provider company in lieu of hiring labor direct. The notice further stated that ELC would be required to pay back pay wages to terminated persons who did not work for ELC during the time period of their lay off until at such time they were employed somewhere else and at similar wages. This amount alleged owed was over four hundred thousand dollars. If the union/NLRB had informed ELC at the time ELC was making these changes, ELC would have immediately stopped and sought other options, one of which had been discussed with ELC's attorney about ELC joining the IBEW. With a two hundred and twenty-five thousand dollar judgment already against ELC and then a four hundred thousand dollar plus charge pending, it was evident ELC was in financial trouble. Couple this problem with the fact that ELC had lost a considerable amount of money forcing me to personally loan ELC over one million two hundred thousand dollars to pay bills and the fact that ELC was meeting resistance at every turn when bidding new work, it became clear that I did not have a choice other than to close the business.

I feel I have been unfairly portrayed as a lying crooked business person in ALJ Sandron's Decision and Order. I wanted to send this Personal Introduction to you to give you an understanding of who I am and how we got to this point. Everything I have said in this letter can be confirmed with proof positive. If need be, I stand ready to come to Washington to stand before the Judges and answer any additional questions you might have.

Respondent's Exceptions And Appeal Brief

Exception #1 ALJ Sandron's Character Assassination

Rebuttal #1 At the beginning of ALJ Sandron's Supplemental Decision and Order dated December 20, 2011, the Judge unleashed a hostile character assassination of Respondent Calvert. ALJ Sandron thought it necessary to reiterate a series of invectives against Respondent Calvert he had previously posted in a 2003 ULP Hearing conducted by ALJ Sandron, i.e., "found him to be a patently unreliable witness", "his testimony smacked of evasion", "was replete with internal inconsistencies", "was frequently contradicted by other witnesses of the Respondent", "demonstrated an attitude of defensiveness, sometime crossing over into argumentative", "and at times appeared to show a contemptuous indifference to providing responsive answers" *1. ALJ Sandron's feeling the need to specifically point out to the Board "he approached the present matter with an open mind as far as evaluating Calvert's credibility and not allowing my past conclusions to influence my judgment"*2, reflects his desire to influence the Board's "first Impression" view of Calvert and to justify his (ALJ Sandron) creditability as being "fair" in his remaining forthcoming judgments within the Order. I respectfully submit that ALJ Sandron did not approach the present matter with an open mind and that his comments and conclusions throughout his Decision and Order confirm my assessment and evaluation of ALJ Sandron and his objectives.

Exception #2 ALJ Sandron's Inference Regarding Respondent Calvert's Memory Loss

Rebuttal #2 At the ULP hearing in 2003, ALJ Sandron admonished Calvert to not answer questions as "I think or I believe" but to answer those questions where Calvert was not one hundred percent certain as "I don't remember or cannot recall".

*1 ALJD page 2/ 40-45

*2 ALJD page 3/ 5

In ALJ Sandron's December 20, 2011 Supplemental Decision and Order, ALJ Sandron now regularly infers that Respondent Calvert was evasive and not forthcoming when asked questions pertaining to ELC, Asset Management, and Retail Marketing, even though most of the questions asked of Calvert pertained to happenings and time frames between 2002 and 2006, with a few questions regarding events between 2007-2009.

It is disingenuous to imply that Respondent Calvert at age sixty-seven, misspoke or had selective memory when the questions asked regarded events that happened six, seven, eight, nine and ten years ago and the fact that Calvert had been admonished in an earlier ULP hearing regarding the answering of questions where there was not a clear recall of the events in question*3. ELC, AM, and Retail Marketing, all businesses of Calvert's, were closed on or before March 30, 2006.

ALJ Sandron's continued inference of wrong doing by Respondent Calvert for Calvert's inability to give "specific and definite" time and date, on the spot answers, regarding bank accounts, personal loans, and other such matters*4 is an attempt of ALJ Sandron's to create the illusion of Respondent Calvert's deceitfulness and his inability to be creditable

Although Calvert and his wife owned the building at 3960 Southeastern Ave, there was no reason for Calvert to go to the property after the closing of Calvert's businesses unless it was to perform maintenance work, clean up old ELC matters that still needed attention, or to visit the existing tenants. Not readily knowing the answers to questions or events which happened several years ago and not readily knowing the location of out dated old un-used computers is unreasonable.

It is also unrealistic to ask a Respondent to give a "specific" reason why he waited two years after the close of the company to auction off once owned ELC equipment (equipment that had been sold and transferred to Respondent Calvert to partially offset personal loans from Calvert

*3 ALJD page 3/ 10-15, Tr page 454/8-9

*4 ALJD page 15 /15-25

to ELC)*5 and then ask the Respondent for a “specific date when the Respondent decided to close the business”,*6 all which happened between 2005 – 2008. To infer the Respondent’s testimony is less than creditable because the Respondent could not give specific dates for those events is misleading and unrealistic.

ALJ Sandron’s referencing Calvert’s responding to many questions saying “the records would show the information” and the judges examples given to substantiate his opinion that the records did not always show the answers to the questions asked, is flawed*7. There are no records to my knowledge that would show a “specific date” when Calvert “decided” to close ELC or when Calvert “decided” to auction off Calvert’s materials and equipment. These decisions were made on a day by day basis and involved many outside influences i.e., conversations with attorneys, accountants, creditors, time needed to advertise equipment and materials for auction, project completion dates, and other influences.

Exception #3 Record Keeping

Rebuttal #3 ALJ Sandron questioned Respondent Calvert’s inability to be creditable claiming creditability was in some way connected to the keeping of old, unused, company and personal records*8 and that ELC records were in disarray.

When ELC, Asset Management, and Retail Marketing were functioning as businesses, all records were kept in file cabinets (some in fire proof file cabinets) and separated according to accounts receivable and payables, tax information (filings and payments), payroll and personnel, corporate information (fillings and payments), material supplier, labor provider information, and project folders that included all contracts, billings, additional work documentation, and correspondence.

*5 ALJD page 3/20,

*6 ALJD page 3/25-30, Tr page 418/7-19,

*7 ALJD page 3/15-20, Tr page 180/13-20*6 *6 *6

*8 ALJD page 3/20-35, Tr page 46/24-25

Also identified and stored were reams of computer printouts for all of ELC's accounting. These printouts contained all information needed to completely and accurately reconstruct the accounting for ELC and AM for the period of time covered by the subpoena. After the businesses closed, all documents were taken from the file cabinets and put into storage boxes. The storage boxes were marked as to type of documents inside, date, and the company's name. The storage boxes were then stored in a storage room in the back of the warehouse.

The storage boxes and records remained in the same location and were untouched for six years, with the exception when NLRB Ramirez and another lady from the NLRB Region 25, was allowed, unobstructed and unattended, to open any storage box and examine any document they felt necessary to fully comply with the NLRB Subpoena. NLRB Ramirez and her partner, removed boxes and documents from the storage room to another area, sifted through the documents, copied some (do not know which documents they copied), took some original documents back to the NLRB office to copy (do not know which documents they took), and returned the boxes to the original storage area. The documents AGC Ramirez removed from ELC's warehouse and took to her office were never returned to ELC until sometime in 2010 or 2011. Clearly Calvert made every good faith effort to safely store the company documents in one place, complete with a locked door, and identify the contents of each box for ease of finding documents at some future date if necessary*9.

Exception #4 Stipulated To Documents

Rebuttal #4 Testimony confirms that ALJ Sandron was confused throughout the hearing as to "stipulated" documents*10. Additionally, ADL Sandron's inference that Calvert on the "last day" of testimony, attempted to claim some of the documents found in ELC storage boxes were personal notes in lieu of business records, even after Calvert's attorney Blankenship stipulated that boxes stored at the 3960 Southeastern Ave warehouse contained business records, is misleading.

*9 ALJD page3/35, Tr page 43/6-8

*10 Tr page 21/12, Tr page 35/ 24, 25, Tr page 36/1-16, Tr page 12/23-25, Tr page 22/20-25
Tr page 23/1-25 Tr page 28/12-15

Testimony transcript confirms*11 that on the “first” day of testimony Calvert expressed concerns that there may be documents in some of the boxes that were of a personal nature*12.

Also, Calvert was not cross examined by attorney Blankenship until the “last” day of testimony where Calvert once again testified, under objection from the AGC*13, that some of the papers found within the boxes containing company records had been inadvertently located there by mistake and they were in fact “not company records”.

Testimony had been given*14 that storage boxes containing ELC records located at 3960 Southeastern Ave. were many, but less than one hundred boxes. Testimony had also been given by AGC Ramirez*15 on day two of the hearing, all storage boxes had been taken from the warehouse at 3960 Southeastern Ave. (on day one of the hearing) and had been delivered to the NLRB. These storage boxes contained thousands of documents. ALJ Sandron’s attempt to show fairness to Calvert, instructing that Calvert be allowed to remove documents of a personal nature before transporting the document boxes to the NLRB hearing room, sounds good but is totally unrealistic. For Calvert to open every box and examine every document so as to be completely satisfied that the boxes contained “only” business documents and that no other personal documents were contained therein, could take several days or even a week. AGC Ramirez and her partner was at ELC’s warehouse for several days yet her testimony was that they did not review everything and only took a “sampling” of documents*17. At no time after the ELC records were delivered to the NLRB did AJL Sandron inquire of Calvert if he had the opportunity to review all the documents and/or if Calvert was satisfied that the boxes contained only business records.

*11 Tr page 47/1-5,

*12 Tr page 47/12-14, Tr page 677/9-15, Tr page 679/1-25

*13 Tr page 767/17-25

*14 Tr page 47/24-25

*15 Tr page 47/12-14, Tr page 767/17-25

*17 Tr page 21/21-25, Tr page 181/2-13

Throughout the hearing, testimony reveals that ALJ Sandron and AGC Ramirez participated in “game playing” allowing documents to be entered into the record as evidence and then considered them as factual even though many were not relative to the cases (their submission was objected to but over ruled) and only served to clutter and confuse the real issues *16.

Exception #5 ALJ Sandron Disputes Money ELC Owes The Calvert’s

Rebuttal #5 ALJ Sandron’s dispute and writings in his decision regarding the amount of money ELC still owes the Calvert’s as of the final day of the trial*18 exposes his eager willingness to accept the AGC’s submitted evidence as “factual” instead of personally investigating or acknowledging there is a difference between the AGC’s records and the Respondent’s accounting. In Calvert’s Brief to the ALJ dated December 12, 2011, Calvert constructed a detail listing of every check number, check date, money transfer dates, check and transfer amounts, the bank that the checks were drawn on, who the checks were written to, and all other money transaction between the Calvert’s personal funds and ELC and Asset Management. This detail listing was shown on pages 33, 34, and 35, of Calvert’s December 12, 2011 submitted Brief. On page 36 of the Brief was a listing of all repayment of loans to Calvert from ELC and Asset Management, again listing all necessary information needed to track the transactions. The information used in creating these schedules came directly from evidence submitted into the record. ALJ Sandron’s comment that Calvert offered no supporting documents regarding the outstanding money stilled owed to Calvert, is untrue. Although Calvert misspoke using the figure of \$1.2 million stilled owed as of the last day of the hearing, the brief submitted to the ALJ **prior** to his decision, clearly shows from 2003 through May 2008 Calvert wrote checks, or there were transfers of money, from the Calvert’s personal finances to ELC totaling \$1, 640,604.55. Furthermore, the chart on page 35 lists checks totaling \$18, 905.00 that was loaned by the Calvert’s to Asset Management to pay ELC bills. The chart on page 36 lists all repayment of loan checks from ELC to the Calvert’s.

*16 Tr page 76/15-25, Tr page 77/2, Tr page 158/3-13 Tr page 212/15-25, Tr page 334/3-20

Tr page 347/1-25, Tr page 353/1-20, Tr page 368/14-25, Tr page 370/2-15, Tr page 588/1-10

*18 Brief 12/12/2011 pages 33,34,35,36, ALJD page 4/5

The total of the repayment amount is \$583, 229.05. Evidence previously submitted shows the totality of the checks and transfers to ELC was \$1, 640,604.55 plus \$18, 905.00 loaned to AM to pay ELC bills. The repayments from ELC to Calvert totals \$583,229.05 leaving a net amount of money ELC owes to the Calvert's as of the last day of the hearing is \$1, 076,280.50. This amount is substantially higher than ALJ Sandron's inference.

Exception #6 ALJ Sandron's challenges Calvert's creditability regarding Passman's business

Rebuttal #6 Amazing ALJ Sandron infers that because Calvert testified he was not involved in Passman's business in any way, Calvert's testimony is not creditable*19. Calvert has never denied loaning money to Passman to help him start his new business. Calvert has never denied loaning Passman money from time to time if and when he needed money. Calvert's testimony has always been that the loans made to Passman from Calvert were "personal loans" meaning Passman owed Calvert the money borrowed independent whether Passman's new business succeeded or failed*20. For this reason, all checks for loans were made out to Passman, and never to anyone other than Passman. ALJ Sandron made statements in his decision*21 that are not true, when he states "Calvert testified---incredible, and in conflict with Passman's testimony that he didn't make any loans to MERC". To my knowledge, Passman's testimony has always coincided with Calvert's testimony that all loans from the Calvert's were personal loans to Passman, and were not loans to his business*22. ALJ Sandron's writings within his decision, continues to demagogue Calvert and attempts to turn allegations into reality, without the preponderance of evidence.

Exception#7 ALJ Sandron's mischaracterization between unsubstantiated allegations and factual evidence.

*19 ALJD page 4/10-15

*20 Tr page 601/17-21, Tr page 598/1-25

*21 Tr page 50/19-20

*22 , ALJD page 4/30-35

Rebuttal #7 ALJ Sandron infers*23 Calvert's writing the name "MERC" on a bank statement somehow indicates Calvert had a business tie with MERC. Whether Calvert wrote MERC or Passman on any document (other than a contract and/or agreement that proved Calvert had an interest in MERC) has no relationship with the "facts". The facts, as testified to many times, is that no ties exist between Calvert and MERC, therefore there has been no evidence submitted disputing those facts.

Also, ALJ Sandron's inference that "Calvert noted on various documents that ELC business services be transferred to MERC and/or Passman", is misleading*24. In reviewing the 5 page document(s) contained in Ex. 162, there is only (1) document pertaining to the estimating system where a notation was made concerning Passman (this service was tied to the estimating software Passman was using and which has been testified to). Reviewing the 11 page(s) contained in Ex. 164 and 164(b), there is (1) document referencing the building telephone system and a notation that Passman would need to contact the telephone contractor to add lines he needed (as a tenant) for his new business. The telephones and telephone system is owned by Calvert and is part of the building.

Exception #8 Testimony Regarding Accounting Practices

Rebuttal #8 ALJ Sandron infers in his statement*25 that ELC's independent CPA and ELC's accounting firm played no part in ELC's accounting and the preparation of ELC's accounting documents. If this is true, who at ELC did this work and why were they not subpoenaed as was Carol Schmidt – CPA- and - Dan Holt - Partner at Yount & Company? Clearly AGC Ramirez knew Darlene Van Treese (an ELC employee) worked closely with Carol Schmidt and often with Toni Swales (Yount employee) and that she performed accounting duties under Carol Schmidt's supervision.

*23 ALJD page 4/15-25

*24 ALJD page 4/30-40

*25 ALJD page 5/5, Tr page 448/4-15, Tr page 502/12-18, Tr page 690/1-21, Tr page 693/13-18
Tr page 696/13-25, Tr page 697/1-16, Tr page 699/9-13, Tr page 517/16-20

These facts are evident in as much as the many legal documents completed by Carol Schmidt and submitted on behalf of ELC required her to have a clear working knowledge of ELC's accounting system with some certainty that the documents she prepared (many based on Van Treese's daily computer inputs) were accurate.

Also evident is the fact that when AGC Ramirez and her partner review ELC documents in ELC's warehouse in 2008 she would have found accounting records that were imputed into ELC's accounting system by Van Treese, and, lastly, the subpoenaed documents delivered to the NLRB hearing room would again confirm Van Treese played a huge part in the daily accounting system for ELC. AGC Ramirez had ample time to subpoena Van Treese (since 2008) so that the AGC's allegations could be confirmed or denied.

ALJ Sandron's stated intention to draw an adverse inference against Calvert because Calvert chose not to call his family as witnesses is nothing more than an attempt to shift the burden of proof from the prosecution to the respondent.

Exception #9 Creditability of Passman and Schmidt

Rebuttal #9 ALJ Sandron shows his viciousness toward Calvert and his intent to undermine Calvert's creditability at every opportunity*26. ALJ Sandron stated that he "only" gives creditability to Passman and Schmidt when, he alleges, their testimony conflicted with or was contradictory to Calvert's testimony.

Exception #10 Disputed Facts regarding Southeastern Ave Property

Rebuttal #10 ALJ Sandron's statement under the heading of "facts", that the building located on Southeastern Ave. "was previously titled in the name of ELC but Calvert and his wife Linda, later purchased it" is absolutely false*27. The property was purchased by Calvert and his wife Linda in 1989 or 1990 and has never been titled in any name other than Edward and Linda Calvert.

*26 ALJD page 5/25-30

*27 ALJD page 6/1, Tr page 758/15-25, Tr page 431/1-3

Calvert testified to that fact several times but ALJ Sandron refuses to allow any creditability to Calvert's testimony but chooses instead to publish statements of fiction as factual when no facts of evidence exist within the evidence submitted at the hearing.

Exception #11 Inference suggesting wrongdoing of Asset Management and Retail Marketing

Rebuttal #11 ALJ Sandron's descriptive events of Asset Management and Retailing Marketing both incorporated in 2001, is misleading. Calvert made every good faith effort to answer questions to the best of his memory regarding events that took place as late as 2005. These two businesses had been closed since 2009 and the company business records had been boxed and stored for approximately 2 ½ years prior to the hearing date.

ALJ Sandron pointed statements that Calvert could not answer questions as to "why" certain things were done in certain ways, implied that Calvert was not creditable with his testimony*28.

ALJ Sandron stated Asset Management made loans inter alia (I do not know the meaning of this word) to Passman*29. This statement, to the best of my memory is not factual. Calvert may have made personal loans to Passman during this period but Asset Management did not make any loans to Passman. To my knowledge no loans were ever made to Passman either from Asset Management or Retail Marketing. ALJ Sandron states Asset Management wrote checks to pay for American Express charges that contained "both" personal and business charges. ALJ Sandron omits from his facts that evidence submitted at the hearing and further submitted in Calvert's December 12, 2011 brief in a concise and understandable manner, confirms the Calvert's had loaned Asset Management \$551, 724.00 since 2005 and had receive repayment for those loans of \$129,000.00, leaving a balance owed to the Calvert's of \$422, 724.00 (see pages 33, 34, 35, &36 of Calvert's December 12, 2011 brief).

*28 ALJD page 13/25-30

*29 Tr page 196/3-5, Tr page 203/1-25, Tr page 210/1-6, Tr page 256/5-25

Calvert acknowledges that property remodeling and other expenses relating to any of Calvert's other properties were paid from the Asset Management account *30. The specific reason for forming Asset Management was to take care of and pay bills for property owned by the Calvert's. Even if evidence had been submitted (and none has been submitted) showing some personal expenses were paid inadvertently by Asset Management, any money deemed to be returned to Asset Management would be offset by the mammoth amount of money left owing to the Calvert's.

Exception #12 Misrepresentation of Retail Marketing and Consulting

Rebuttal #12 ALJ Sandron's representation of Retail Marketing & Consulting business nature and practice is inaccurate. As previously testified to, Retail Marketing & Consulting was established to "market to" national retail chain stores, as a company with the knowledge, experience, and expertise to provide all types of construction and other specialty services required by their companies. Retail Marketing & Consulting never intended to act as a "contractor" but instead wanted to obtain the work then sub the work out to other contractors. In the construction industry this business practice is known as being a "jobber" or acting as a construction manager.

Exception #13 ELC's inability to obtain new work

Rebuttal #13 ALJ Sandron's allegations that Calvert sending letters to ELC customers on about January 10, 2006 precluded ELC from obtaining new jobs, is misleading and not accurate*31. Testimony was given that Calvert decided to close ELC sometime in 2005. Passman had also given testimony that he and Calvert had discussed Calvert closing ELC. ALJ Sandron alleges Calvert should have known a "specific" date when the decision was made, a representation that is totally unreasonable.

*30 ALJD page 6/5-10, Tr page 573/14-25, Tr page 574/1-25, Tr page 51/21-25

*31ALJD page 7/25-30, Tr page 421/14-19, Tr page 670/1-25, Tr page 815/1-25

It is insincere of ALJ Sandron to make this representation regarding ELC failure to obtain new jobs when he knows that the wheels of closing ELC had been set in motion in 2005 and that the inability of ELC to obtain new work “prior” to the point of making the decision to close the company was a factor for their closing.

Exception #14 Company Assets sold to Calvert for reduction of company debt.

Rebuttal #14 ALJ Sandron’s writings regarding the handling of ELC assets is confusing. Evidence previously submitted*32 shows, when contemplating the closing of ELC, Board members and ELC’s attorney discussed on June 22, 2005 the fact that “as of this meeting” ELC owed money to the Calvert’s amounting to \$1, 231,020.41. This money represented money loaned to ELC to pay labor, material suppliers, utilities, taxes, and other debts ELC duly owed. With no foreseeable way to be repaid for the debt ELC rightfully owed to the Calvert’s, it was resolved that the remaining assets of ELC would be appraised by a qualified appraisal company to determine “fair market value” and then the Calvert’s would purchase those assets from ELC by reducing the debt by the appraised “fair market value” from the amount of money the company owed the Calvert’s. Since the debt to the Calvert’s was owed on or before June 22, 2005, it was fairly resolved that the Calvert’s would take possession of the assets as of July 1, 2005 and after the appraised value had been received, the corporate documentation would be completed deducting the appraised amounts of the assets from the amount of debt owed to the Calvert’s. The appraisal was made by the Norman J Gallvin Company on or about July 26, 2005. A written appraisal was presented to Calvert August 22, 2005. A Board Meeting was held on September 2, 2005, and using the appraised numbers for purchase price of the assets, ELC’s debt was reduced by that amount. It should be pointed out that the appraisal listed a “fair market value” and a “forced liquidation value” and the forced liquidation value was only \$88,000.00. It should also be noted the Calvert’s credited to ELC’s debt, the highest amount of the appraised value.

*32 ALJD page 7/35-45, ALJD page 8/5-15, Exh 41, Tr page 222/1-25, TR page 603/1-25

The court transcripts (pages 523-533) pertaining to questions asked Calvert by AGC Ramirez, reads like a Chinese jigsaw puzzle and was extremely confusing at the time of the questioning. The AGC would ask certain questions and then would give testimony in the form of a question which would appear in the transcript, making it to appear as if Calvert was giving conflicting testimony. An example of this is when AGC Ramirez asked questions regarding the selling of the ELC assets to Calvert, the date of the sell, the date of the appraisal, the amount of the appraisal, and if the assets were indeed transferred to Calvert. After repeated testimony by Calvert answering these questions, AGC Ramirez asked on page 525-526, "do you recall when that transaction took place", having full knowledge of that answer by evidence she submitted. She further asked, as shown on page 526 "was it before ELC closed its operations or after" again knowing the answer was in evidence. Then, in my opinion, deceitfully, AGC Ramirez asked Calvert a question as shown on page 530, "and the auction was for ELC's equipment that was in inventory", knowing evidence and testimony had been given that the materials sold at auction belonged to Calvert and were not ELC assets. Mr. Gath (union attorney) ,raised the fact that since an Indiana Court Judge had given a summary judgment regarding a State Suit alleging ELC failed to pay proper wages on a prevailing wage project, the auctioned materials and equipment were in fact ELC's and not Calvert's. Mr. Gath failed to advise the court however, that the Summary Judgment Order by the Indiana Judge was issued on September 6, 2006, a clear 14 months after all of ELC's assets were legally transferred to the Calvert's. It should also be noted that all proceeds from the auction of tools and materials were turned over to the Indiana Courts and given to the Plaintiffs and that Calvert did not receive any of this money. Since Calvert never received the proceeds from the assets, realistically, the money Calvert credited to ELC for those assets (\$127,000.00) should be added back to the debt ELC still owes the Calvert's.

Exh 41

Tr page 49/1

Exception #15 Disputable Accounting of Calvert's Personal Loans to ELC

Rebuttal #15 ALJ Sandron states that ELC repaid the Calvert's \$420,000.00 after September 6, 2005*33. He further states emphatically that all documentation of the loans produced for trial is contained in Exhibit 41. In Calvert's December 12, 2011 brief to ALJ Sandron, Calvert referenced by exhibit numbers, the exhibits that show evidence of checks or money transfers from Calvert's personal finances to and from ELC and Asset Management. Calvert also constructed an itemized schedule as shown on pages 33, 34, 35, and 36 in that brief using the evidence contained in the referenced exhibits. ALJ Sandron completely ignored the schedules Calvert submitted and instead used information from the AGC, expressing it as truthful when in fact it was totally incomplete.

Exception #16 ALJ Sandron Allegations of Improper Use of ELC Funds.

Rebuttal #16 Calvert never denied that he and his wife charged items on credit cards that were both for personal and business expenses. Calvert does however reiterate that credit cards receipts were turned in each month to ELC book keepers. Receipts were marked as to the nature of charge and names of anyone which would represent a business interest. The charges would then be computer inputted with accounting codes that would place the charges correctly into the accounting system. ELC paid several thousands of dollars to have an accounting system tailored especially for ELC (Millennium System) that would be clear and transparent, showing daily events of ELC's accounting that could be "tracked".

AGC Ramirez failed to submit any actual evidence proving the allegations that credit card charges were not separated into business and personal categories. Volumes of computer printout sheets were delivered to the AGC as requested. These documents showed ELC accounting.

*33 ALJD page 8/10-25

The computer printout sheets would show each computer entry, the accounting code, and where each charge was posted. Even though AGC Ramirez had this information that would either confirm or rebut her allegations, she failed to submit this evidence to the court. WHY? Furthermore, AGC Ramirez failed to call Van Treese as a witness to collaborate her allegations.

Exception #17 ELC & MERC Relationship Prior to ELC Closing

Rebuttal #17 AJL Sandron's Facts regarding ELC and MERC's relationship prior to ELC closing about March 25, 2006, is misleading*34. In December 05 Passman had knowledge ELC was closing as soon as possible. Passman knew ELC was not accepting any new work and was only keeping the necessary employees needed to complete the Wal Mart Greenwood project as soon as possible. The record reflects Passman incorporated MERC in December 05 (I had no personal knowledge of that fact until seeing the record). Passman according to the record employed some of ELC employees to work for his new company, while they still worked at ELC. I never had any knowledge of who Passman actually employed, when they were employed, or when or where they worked. The fact that Passman used the estimating software (certin) in January 06 is natural since ELC was only interested in finishing the WalMart work and there would be no need to keep the estimating software.

Exception #18 ALJ Sandron's Statement Contradiction

Rebuttal #18 ALJ Sandron's contradicting statements within the ALJ's decision is baffling. On page 9 of the ALJD, ALJ Sandron states the Calvert told Passman he (Calvert) would help him out by loaning him (Passman) some money to get started, a fact that Calvert has testified to and has never denied. Now, on page 12 of the ALJD, ALJ Sandron stated in a disparaging manner "Calvert's unbelievable testimony that all of the loans were personal to Passman and that Calvert did not know they were for MERC".

*34 ALJD page 9/40-45, Tr page 230/19-24,

The AGC and the ALJ continue to infer Calvert loaned money to MERC which is untrue. There is not one check written from Calvert to MERC. The money Calvert loaned was to Passman the individual. The repayment of those loaned amounts did not depend in anyway whether MERC succeeded or failed. Continuing to turn allegations into truths, ALJ Sandron attempts to form a tie between Calvert and MERC so qualifications can be met to move forward with piercing the corporate veil.

Exception #19 ALJ Sandron's Misstatements Regarding Tenants at Southeastern Property

Rebuttal #19 ALJ Sandron's statement in the ALJD page 13 is flawed and inaccurate. ALJ Sandron's statement that Calvert maintained an "office" on the left side of the building is misleading. There was an office space where Calvert could go to if he wanted to (Calvert is the owner of the property) however, Calvert spent little time at the Southeastern property. The statement that Katrina Stringer maintained an office on the left side of the building is completely false. Katrina Stringer did not have an office at the property in 2010 and never had an office on the left side of the building. The statement that Kevin Calvert had an office on the second floor and operated USF out of this office in 2010 is completely false. USF vacated the building in November or December of 06 and was no longer a tenant at the Southeastern property in 2010.

Exception #20 ALJ Sandron's Statement under the heading "Conclusions"

Rebuttal #20 ALJ Sandron's continuing use of disparaging remarks regarding Calvert's character and creditability throughout his decision is disturbing and unprofessional. His remarks show his animus toward Calvert and his close mindedness throughout the hearing. In the ALJD, page 13, ALJ Sandron mentions once again that Calvert was unreliable as a witness and that Calvert's record keeping was incomplete and informal.

He makes this incredible statement after the NLRB received and stored in the hearing room, 27 large file boxes filled with company documents and 20 large Binders filled with reams of large size computer paper printouts containing company accounting records *35.

Exception #21 Bona Fide Reason to Close Business

Rebuttal #21 ALJ Sandron writes in his decision “Calvert established no bona fide business reason for closing ELC”. Testimony has been given that in 2004-2005 ELC won public works projects and that after interference and contact from “someone”, the owners, school boards, or general contractors decided to award this work to the second low bidder. ALJ Sandron wrote Calvert did not produce any documentation to show that ELC was losing money in late 2005-2006, however, AGC Ramirez had subpoena documents in her possession (financial statements, job cost documents, and others) that would confirm Calvert’s testimony to be truthful, however, AGC Ramirez failed to introduce this evidence relying more on supposition and allegations, each being void of actual “evidential facts”.

Exception #22 Calvert’s sole control of ELC

Rebuttal #22 ALJ Sandron totally ignores testimony from Calvert, Schmidt, and Dan Holt*36. These witnesses testified company accounting was done on a daily, weekly, and monthly basis, consistent with normal business practices and accounting principles. This accounting and work, was completely “void” of any interferences or control from Calvert. Additionally as the evidence and testimony shows, there were “several” employees at ELC who had the positions and authority to effect company finances, i.e. purchasing agents, project managers, office manager and others. ALJ Sandron’s statement that Calvert had “sole and total control” of ELC is completely false. ALJ Sandron’s accusations that money transfers between Calvert (and family member’s of Calvert) and ELC and AM was outside the knowledge of accountants, is non sensible.

*35 Tr page 180/17-20

*36 ALJD page 13/25, Tr page 449/15-25, Tr page 508/12-21, Tr page 510/6-10, Tr page 513/2-11, Tr page 515/15-20

Great emphasis was placed, as the evidence shows, on documenting each transaction to create a paper trail that could be followed. This is not the work of someone who is trying to hide the traceability of records. ALJ Sandron's statement that corporations ELC and AM were corporations in "name only" is unbelievable. Volumes of documents submitted into evidence showing transactions made by the company and by Calvert, clearly dispute these accusations.

Exception #23 Finding ELC, AM, and Calvert were Single Employer.

Rebuttal #23 ALJ Sandron so called "factual" findings is based on the AGC allegations and on AGC's Ramirez's brief, rather than on the "evidence". His finding that ELC and Calvert acted as one, even after testimony of Calvert and ELC accountants and knowing ELC engaged outside legal counsel throughout the corporation's life, is unbelievable and defies conventional logic *37. ELC and AM were individual corporations, having separate identities, performed completely different work, and had completely different goals. Both companies had separate accounting systems, filed separate Federal and State corporation reports, and filed separate tax forms.

Exception #24 Calvert's Personal Liability

Rebuttal #24 ALJ Sandron's conclusion, and his reasoning for his conclusion, regarding the piercing of the corporate veil between Calvert, ELC, and AM, is totally false and ignores the testimony of Calvert, corporate service providers used by ELC and AM and evidence submitted at the hearing. ALJ Sandron statement that ELC, a company established 23 years ago and has operated as a corporation in good standing with The Indiana Secretary of State, has "no practical existence outside of the person of Calvert" is not supported by the evidence. ELC maintained excellent corporate records, well enough that satisfied banks, bonding companies, general contractors, owners, The State of Indiana, and others who relied on ELC accountants to produce accurate financial information. To make such a statement as ALJ Sandron did, with documentation available for his review, is disingenuous and smacks of a "personal agenda".

*37 ALJD page 14/5-10, Tr page 507/5-22, Tr page 508/8-21, Tr page 693/19-25, Tr page 694/1-21

ALJ Sandron's statement that bears no creditability is when he states "Calvert effectively sabotaged", ELC's business and did so to evade his legal obligations to pay the back pay owed to 16 discriminates". To allege Calvert, for 23 years, had been operating ELC and AM in a self interest manner paying no attention to corporate structure and regulations governing corporations, is not supported by the evidence.

To suggest that Calvert used daily and absolute control over the corporation is to insinuate Calvert gave instructions to independent corporate certified public accountants and accredited accounting firms as what to do and where to post certain cost and expenses. These assumptions are just not reasonable.

Subpoenaed documents show Calvert made a good living in the 1980's and 1990's and the business grew. The theory and allegations that Calvert intentional set out to destroy a 23 year old family business merely to avoid paying back pay to 16 people is void of any reason or business sense. If the business had been making money, Calvert would have had other options i.e. negotiating with the 16 past employees; that would have eliminated the necessity to close ELC. The fact that Calvert was required to "liquidate" personal finances to loan ELC over \$1.2 million dollars to pay for labor and materials used on projects with no foreseeable way to regain this money, was also a factor in Calvert's decision to close ELC.

Exception #25 MERC as ELC Alter EGO

Rebuttal #25 In ALJ Sandron's writings under the heading "MERC as ELC's Alter EGO", reveals an attempt to tie, or make the case, that since MERC was engaged in electrical work and participated in the natural business practices of "an electrical company", those similarities offer some form of proof of an Alter Ego relationship with ELC. ALJ Sandron also represents that because MERC hired some electricians who previously worked for ELC, contacted customers of ELC, and that MERC's primary work was electrical, the same as ELC, these similarities prove a tie of an Alter Ego relationship with ELC. This representation is completely non sensible. Anyone opening an electrical company would need to do certain things. First they would need a name, then open a bank account, have an address, contact the telephone company and establish a phone number, decide which type of business they wanted to work under, i.e., C Corporation, S

Corporation, LLC Company, Partnership, and so forth, then obtain the proper forms from the IRS and from the State of residence. Next, the person would contact electrical supply house(s) that sell electrical materials and open credit accounts. To insinuate these actions in some way form an Alter Ego relationship with ELC is unbelievable. ALJ Sandron's attempt to form another tie pointing to fact that Passman hired good electricians who had worked for ELC is void of any business sense. Knowing ELC was closing and that those electricians would lose their employment with ELC, why would Passman not hire those good electricians? It is beyond belief ALJ Sandron would try to form an illegal inference by this action. ALJ Sandron claims MERC doing work for customers of ELC again creates a tie of some sort between ELC and MERC. It would be completely unreasonable for Passman, who set up a new company because he was losing his job with ELC because ELC was closing, to not contact customers, general contractors and others that might have work for his new company. Would it be sensible and business prudent, to allow competitors contact those potential customers instead? I think not.

Exception #26 Calvert's Involvement with MERC

Rebuttal #26 ALJ Sandron admits Calvert has had no direct involvement with MERC as far as management, supervision, or ownership*38. Calvert and Passman both testified that they have a close and personal relationship. The decisions Calvert made to help Passman was a "personal" decision and not a "business" decision. All money loaned to Passman came from Calvert's personal finances. Calvert allowed Passman to remain at the Southeastern property even though Passman was experiencing rough times and did not have the money to pay rent, because Passman was a friend. The Southeastern property was owned by the Calvert's and allowing him to stay had no affiliation with ELC or AM. Calvert let Passman use certain equipment and materials. In direct contradiction to ALJ Sandron's statement, the equipment and materials Calvert allowed Passman to use were Calvert's property and not ELC property.

*38 ALJD page 15/35, Tr page 741/4-16

Previously stated, the ownership of this equipment and materials had been legally transferred to Calvert July 1, 2005, as an inducement for Calvert to lower the debt ELC owed to the Calvert's. ALJ Sandron's accusation that Calvert used MERC as a method of evading ELC's legal obligations is just non sensible and unsubstantiated by proof.

Exception #27 Golden State Successor

Rebuttal #27 ALJ Sandron's decision that MERC was a successor employer to ELC is flawed and not substantiated by the facts. The established date for MERC's incorporation was late December 2005. Testimony has been given that MERC was doing business in January and February of 2006. Passman's testified that he did receive a letter from the NLRB Regional Office dated February 7, 2006 however, according to Passman, this letter did not represent a "cease and desist" order calling for the stopping of work or for the closing of the business but was more of an "informational" notice. According, it is my understanding, Passman did not believe this notice indicated anything more than mere information and continued operating his business knowing that "he was not an Alter Ego of ELC and that he would not be affected under the Golden State Successor concept. Had Passman been guilty of either concept, the reasonable action would have been to immediately stop doing business as MERC and take another course of action. Passman's decision to continue operating his business after receiving notification of impending action from the NLRB against Calvert and ELC, reasonably suggest the alleged ties between MERC and ELC did not exist.

Exception#28 Undercapitalization

Rebuttal #28 ALJ Sandron's allegations ELC was undercapitalized is completely invalid. Undercapitalization exists when the corporation is first established and is not valid when corporate finances change due to financial reverses.

Westlaw

Sept 5, 2002

(2)Corporations and Business Organizations 101-Key 1086(2)

A party seeking to pierce the corporate veil bears the burden of establishing that the corporation was so ignored, controlled or manipulated that it was merely the instrumentality of another, and that the misuse of the corporate form would constitute a fraud or promote injustice.

(6)Corporations and Business Organizations 101-Key 1045

For the purpose of piercing the corporate veil “**inadequate capitalization**” means capitalization **very small** in relation to the nature of the business of the corporation and the risks attendant to such business.

(8)Corporations and Business Organizations 101-Key 1161

A corporation that was adequately capitalized “**when formed**”, but which subsequently suffers financial reverses **is not undercapitalized**.

ELC was incorporated in 1983. It is clear that 23 years of doing business as an Indiana Corporation substantiates the Corporation was not undercapitalized.

Exception #29 Supplemental Decision and Order

Rebuttal #29 ALJ Sandron ruled against Calvert, ELC, AM, and MERC on every point of AGC Ramirez’s request in her brief. ALJ Sandron decision covered every item necessary to pierce the corporate veil. ALJ Sandron’s Order was arrived at using misleading and untruthful characterizations of Calvert, accepting AGC Ramirez’s allegation as factual evidence, ignoring evidence submitted or the lack of evidence not submitted, and attempting to transfer the burden of proof to Calvert in lieu of NLRB rules that indicate the” burden of proof with a preponderance of evidence” is placed on the government.

Summary

Ed Calvert incorporated ELC Electric in 1983 with only a few employees. From 1983 to 2000 ELC grew substantially. ELC successfully completed several million dollar plus contracts and enjoyed good relationships with general contractors, owners, architects, and engineers. In many of those years, ELC averaged 3 ½ million per year in revenues with net profits in the 3-4 percent range. In 2001, Ed Calvert established two other companies independent from ELC Electric. One company, Asset Management Partners, Inc was established with the goal of taking care of properties owned by Ed and Linda Calvert. Also, Ed Calvert at one time, thought about opening up a tool rental company under AM. Ed bought computer program software for tool management that included a scanner and scanner tags, but this idea never materialized. The second company established was named Retail Marketing and Consulting, Inc. This company's goal was to market (sell) Ed Calvert's expertise and ability to effectively manage and complete on time, specialty work needed by national retail companies i.e., Wal Mart, Lowes, Home Depoe, K Mart, Builders Square, Dress Barn, and other such national companies. This work included, concrete work, structural steel work, electrical work, painting, floor tile, plumbing, HVAC, store fixturing, and others. Ed Calvert possessed the expertise and ability to handle this work. Sometime In 2004, due to everything that was going on with ELC Electric and Calvert's inability to spend the time needed to pursue the goals for Asset Management and Retail Marketing Calvert decided to close both corporations. Sometime In 1999-2000 and do to ELC's success in bidding prevailing wage school projects, I was told (but cannot prove) the local IBEW sent the word out that they were going to put ELC out of business. Union affiliated persons would apply for employment and after working for 2 to 3 weeks, they would come out with their union shirts and the company would get a letter from the IBEW that they were union organizers. After slow working, coming in late or even missing work unexcused, they would quit and immediately file unfair labor practice charges against the company. These events were happening in 1999-2003 or 04. Many of their charges were frivolous, confirmed by many of the charges being dropped after ELC had spent between \$3500 and \$5000 to defend itself. Between 2000 and 2003 ELC spent nearly \$200k in legal fees. Also during this period, these events cause disruptions on projects causing projects to break even at best and many times

lose money. This is confirmed by later facts that Ed Calvert needed to loan from his personal finances over 1.2 million dollars to pay ELC debt. In 2004 ELC was running out of work and began aggressive bidding of new projects. ELC was the successful bidder on approximately 4 million dollars worth of public work projects. Each time, “someone” would immediately contact the school boards or construction managers and tell them ELC was a prevailing wage violator and intimidate them into awarding the electrical contracts to the 2nd bidder. This completely dispels ALJ Sandron’s statement that ELC sabotaged ELC’s ability to get new work. At some period in 2005, after reviewing the company’s situation, Ed Calvert determined trying to move forward would be a losing proposition and believed the right business decision would be to close ELC. This decision was based on ELC needing 1.2 million dollars to pay current bills and the realization that the repayment of this money was highly unlikely and the fact that ELC was getting major resistance from “someone” when trying to get new work making moving forward unrealistic. Calvert began talking with attorneys and accountants regarding closing ELC and considering the debt ELC owed to Calvert, a decision was made to sell the ELC assets to Calvert and reduce the debt owed to Calvert by a “fair Market” appraised value for those assets. A professional appraisal company was hired to appraise the assets. A Board meeting was held and it was resolved that Calvert would purchase these assets and that Calvert would take possession of these assets by July 1, 2005, and rightfully so inasmuch as the date of the \$2.1 million dollars owed to Calvert was as of June 22, 2005. Even though Calvert owned all assets of ELC as of July 1, 2005, Calvert did not charge any lease or rental for those assets up through the closing date of March 25, 2006. Calvert wanted to finish all work under contract to ELC before closing. Calvert’s original date to close was sometime in December 2005. Calvert stopped bidding new work and focused only on completing existing work. Calvert completed all work prior to December except the WalMart Greenwood project. This project had an original completion date in December 05, however, additional work kept extending the project completion date. For this reason, Calvert did not close ELC as originally planned but kept trying to finish the project. In February-March of 06, Calvert determined he could no longer stay until the WalMart project was completed. Calvert gave notice to WalMart, the general contractor, ELC material suppliers, ELC employees, and ELC labor suppliers that ELC was closing March 26,

2006. In 2005, after making the decision to close ELC, Calvert told Kevin Passman, a VP at ELC and long time friend, that ELC was closing in December and that he would be losing his job. Calvert discussed with Passman, his (Passman) options that either Passman would need to look for work with other electrical contractors or he could go into business for himself. Calvert told Passman that, as a “personal friend” (not as a business relationship), Calvert would help Passman to get his business off the ground. Passman at some later period of time talked with Calvert and told him (Calvert) he decided to try open up a new business. Upon learning this, Calvert discussed with Passman the things Passman needed to do to get started, i.e., come up with a name, have an address, get a company telephone number, open a company bank account, get a lawyer, incorporate the business, get a federal ID number, get a State ID number, set up supplier credit accounts, and so forth. Calvert, as a friend, sent some letters to some of ELC customers telling them ELC was going out of business and that Passman was starting up on his own. Calvert told customers that Passman was honest and did very good work. Calvert recommended Passman to several people. All of these recommendations were done not as a business but as a personal friend of Passman. Calvert’s actions did not harm ELC in any way since ELC was closing as quickly as possible and was not accepting any new business. Calvert told Passman he would help him and loan him money to get started. Calvert also told Passman that any loans to him would be “personal” loans and were not associated with “any” business. Calvert made personal loans to Passman from time to time until such time that Passman had enough receivables coming in and had the ability to establish credit on his own. Passman paid Calvert back for every loan. In the beginning Calvert also allowed Passman to use Calvert’s American Express card to charge materials and other items. At each month, Passman would reimburse Calvert for the charged amount of money. In the beginning Calvert set up a lease with Passman to use office and warehouse at Calvert’s building at 3960 Southeastern Ave. In this lease Calvert agreed to let Passman use Calvert owned vehicles and Calvert owned tools until such time that Passman could purchase those items himself. At some period of time Passman’s work dried up and Passman was unable to pay the Lease amount. Calvert let Passman stay at his (Calvert) property hoping his work would return and allow him to pay rent.

In 2010 Calvert advised Passman he needed to move since another tenant needed the space Passman was using. Passman vacated the property in June of 2010. And so we come to today.

ALJ Sandron has decided Calvert's personal friendship with Pasman and his personal help for Passman, are actually business related between ELC and MERC and violates the NLRA. ALJ Sandron has only allegations to support his claim. There are no business ties between Calvert and Passman's company, no checks written from Calvert to Passman's company, and no checks written from MERC to Calvert. Furthermore, facts and testimony indicate Passman's company has not done or tried to do, any of the sophisticated and large projects that ELC Electric did when in business. The claim of an Alter Ego relationship between MERC, ELC, Asset Management, and Ed Calvert is unsubstantiated and without merit.

ALJ Sandron had decided Calvert and Asset Management constitute a single employer. AM & ELC were completely two different corporations with two completely different goals. AM and ELC had different bank accounts, had different accounting systems, had different phone numbers, filed different tax returns, and are only tied by the fact that Calvert was President of both corporations. ELC had employees and AM did not have any. The claim of a single employer relationship between AM and ELC is unsubstantiated.

ALJ Sandron has decided MERC is a Golden State Successor to ELC. In the Golden State Successor case, All American Beverage "purchased" the soft drink bottling and distribution business. Clearly MERC did not purchase ELC's "business". Calvert closed the business of ELC Electric. Clearly MERC did not purchase ELC assets needed to continue ELC's business as a major electrical contractor in the Indianapolis market. Clearly MERC did not "continue" operating as ELC had operated, without interruption or substantial change in operations. Clearly MERC never bid on any million dollar project or on any project even close to that amount. In the All American Beverage and Golden State Bottling Company case, All American Beverage purchased the business of Golden State Bottling including all assets and continued to run the business under the name of All American Beverage. All American Beverage continued to operate this business using all (not just one or two) of Golden State Bottling Company employees and did so without any interruption of the business. To determine MERC and ELC business relationship

was the same as, or even close to, the relationship as All American and Golden State is a stretch that will not reach.

Through the NLRB hearing, many questions were asked concerning time of events, date of events, places where events happened, who else was there when events happened, what telephone did you have, when was the telephone disconnected, what specific date did you have to close your company, why didn't you try to get new work after you made the decision to close the company, and many other such questions along this line. ALJ Sandron has agreed with AGC Ramirez on almost every point of her case claiming not giving affirmative and specific answers to these questions in some way indicates Calvert's reluctance to be honest and truthful casting further doubt on Calvert's character. Even though the filing of a hearing for these cases was consistently being delayed and that the hearing of July 2011 was more than 9 years from the date of some NLRB claims, ALJ Sandron views Calvert's testimony as if these events happened last year. I admit I do not recall with specificity dates and times of events happening several years in the past. I also admit that in 2002 through 2006 many things were happening at a rapid pace. Carol Schmidt, a long time ELC accountant (independent) resigned in 2004 causing ELC to hire a new accountant. A barrage of ULP charges were being filed against ELC (many which NLRB records will show were frivolous and were withdrawn) causing ELC to spend much administrative, accountant, and my time defending these allegations, not considering the enormous outlay of legal expenses associated with these charges. ELC was furiously bidding new work in the hopes that new work would allow ELC to continue its operation. After the decision was made to close ELC, I worked tirelessly trying to get all work under contract to ELC completed, to get money owed to ELC collected, to get suppliers paid, and to provide personal loans to ELC to accomplish these tasks. I further admit that due to many of these circumstances documentation for money borrowed was not properly done i.e., corporate borrowing notes, etc., however, the paperwork and check documentation was clearly marked as to money borrowed. It should be noted that when Carol Schmidt was the CPA for ELC, she did prepare the proper corporate documentation for loans to the corporation as confirmed by yearly financial statements prepared by Schmidt showing a note due to Calvert in excess of \$101,000. Even though admittedly mistakes were made during the time periods in question, allegations that

ELC records in their entirety, were not kept properly in the manner of a corporation, is completely false and not substantiated. Contradictive testimony from AGC Ramirez admitted she had direct knowledge that massive amounts of ELC documents still existed at Calvert's warehouse, in addition to those submitted to the NLRB (22 large file boxes full) and, according to AGC Ramirez prior testimony, she estimated there was approximately 100 file boxes at the site leaving approximately 78 file boxes remaining at the warehouse. This confirmation of massive records defies the allegations of loose record keeping. When examining all the records in their entirety, I believe the evidence and testimony shows although some mistakes were made, ELC operated as a completely individual corporation, separate from any other corporation, and that piercing the corporate veil would be a miscarriage of justice.

The NLRB policy and procedures manuals suggest that the ALJ should remain neutral at all times during the compliance hearings. Also, suggestions are made to the AGC to limit the number of documents to only those that apply directly to the cases in questions to eliminate confusion. Clearly the policy manuals have not been adhered to by the ALJ and/or the AGC.

The ALJ over ruled the Respondent's attorney (24) times and sustained the AGC objection three times*39. The ALJ never sustained any objection from the Respondent's attorney. The ALJ refused to let the Respondent's attorney answer a question for clarification*40. The ALJ refused to let the Respondent's attorney speak, refused to have the court reporter read back the question and answer as requested, and refused to hear argument*41.

*39 Tr page 77/2, Tr page 158/5-14, Tr page 212/15-24, Tr page 228/20-25, Tr page 295/1-7 Tr page 344/3-20, Tr page 347/1-25, Tr page 353/1-25, Tr page 498/7-24, Tr page 518/14-25 Tr page 588/2-10, Tr page 595/4-25, Tr page 596/1-9, Tr page 605/1-3, Tr page 618/20-25 Tr page 685/20-25, Tr page 711/2-11, Tr page 727/1-6, Tr page 730/1-3, Tr page 761/5-13 Tr page 767/6-15, Tr page 775/5-12, Tr page 784/1-25, Tr page 796/15-22, Tr page 824/23-25 Tr page 853/3-25, Tr page 852/11-25

*40 Tr page 260/17-20,

*41 Tr page 267/1-25, Tr page 268/1-7, Tr page 255/6-15

*42 Tr page 31/6-9, Tr page 33/9-10, Tr page 45/15-21, Tr page 107/10-25, Tr page 108/1-25

On many occasions the ALJ would assist the AGC in making her case and many times would almost take over the prosecution of the case*42.

The AGC submitted document after document that were objected to on relevance but allowed by the ALJ. Exhibits # 56, 57, 59, 60, 61, 62, 100, 110, 111, 113, 114, 115, 117, 119, 120, 121, 122, 172, and 173, all relate to electrical supply houses, sprint, AT&T, equipment rental companies, temporary employment agencies, and gas credit cards. These companies are not exclusive to ELC and MERC but almost every electrical contractor in Indianapolis uses most of these businesses. So many documents were submitted that the ALJ and the AGC became confused several times throughout the hearing*43. The AGC asked the same questions over and over, many times over objections of asked and answered. The AGC refused to answer the question “were some of the documents in ELC file boxes taken from ELC file cabinets”*44. The AGC also mislead the ALJ into admitting evidence, objected to on relevance by the respondent’s attorney, testifying she would show its relevance, claiming she had evidence showing Calvert had knowledge of the way Passman was operating MERC, knowing Passman was taking dividends from MERC, even though Passman was not paying rent to Calvert, and that it was a “sham”*45. The AGC NEVER provided the evidence she claimed to have making her claim to the court dishonest.

*42 Tr page 109/1-12, Tr page 111/1-25, Tr page 254/1-13, Tr page 288/19-25, Tr page 499/8-10, Tr page 604/25

*42 Tr page 109/1-12, Tr page 111/1-25, Tr page 254/1-13, Tr page 288/19-25, Tr page 499/8-10, Tr page 604/25

*43 Tr page 207/17-18, Tr page 208/14-15, Tr page 254/15-25, Tr page 488/10-25, Tr page 581/7-25, Tr page 585/13-21, Tr page 613/1-12, Tr page 615/1-2, Tr page 711/22-25, Tr page 826/1-8

*44 Tr page 855/13-19

*45 Tr page 368/2-25, Tr page 369/1-12

Closing Statement

The ALJ stated there are four issues involved in this case. Whether ELC and AM constitute a “single employer”; should the corporate veils of ELC and AM be pierced and Calvert be found to be personally liable; are ELC and MERC alter egos; and is MERC a Golden State successor to ELC.

I believe the evidence, or lack of evidence submitted, the fact the AGC delayed filing for a hearing for almost three years (five years after ELC closed), the failure of the AGC to subpoena ELC’s in house book keeper Darlene Van Treese, someone whose testimony could confirm or rebut the majority of the AGC’s case, are valid reasons to sustain my appeal. The fact that AM was established in 2001, four years prior to any consideration of closing ELC (a company completely separate from ELC with separate goals and separate duties), and that AM and ELC record keeping was completely separate and overseen by an independent CPA, and that all corporate records, taxes, and reports were filed separately for each corporation, should be sufficient to deny the piercing of the corporate veils. ELC and MERC both did electrical work however, ELC performed electrical work on major projects with major degrees of sophistication and some contracts over a million dollars while MERC worked on very small electrical projects and mostly concentrated on “service work”. To imply MERC was a continuation of ELC’s electrical business is nonsensical. Golden State successor is about a company who purchased another company in its entirety, kept most of the employees, and continued to operate the new company in the same manner as the old company without missing a beat. The relationship between ELC and MERC clearly has not modeled after this example.

For these reasons, I respectfully request the Board sustain my appeal and close this matter.

/s/ Edward L Calvert

March 19, 2012

Date

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Respondent Edward L. Calvert's Exception and Appeal Brief has been served by placing in the NLRB Executive Secretary E-room and to the parties by Electronic Mail on March 19, 2012 upon the following persons, addressed to them at the following addresses:

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